

**THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA**

**THE SENATE**

**COMMITTEE OF PRIVILEGES**

**POSSIBLE IMPROPER DISCLOSURE OF  
DOCUMENT OR PROCEEDINGS OF  
MIGRATION COMMITTEE**

**(48TH REPORT)**

**JUNE 1994**

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## MEMBERS OF THE COMMITTEE

Senator the Honourable Margaret Reynolds (**Chairperson**) (Queensland)

Senator Baden Teague (**Deputy Chairman**) (South Australia)

Senator Bruce Childs (New South Wales)

Senator John Coates (Tasmania)

Senator Christopher Ellison (Western Australia)

Senator Jim McKiernan (Western Australia)

Senator Robert Woods (New South Wales)

The Senate

Parliament House  
CANBERRA ACT 2600

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## 48TH REPORT

### CHAPTER ONE

#### Introduction

1.1 On 25 November 1993, the following matter was referred to the Committee of Privileges on the motion of the Chairman of the Joint Standing Committee on Migration, Senator McKiernan:

Having regard to the article in *The Canberra Times* of 25 November 1993, headed 'MPs to press for softer detention rules for refugees', whether there was a disclosure of a document that is confidential to the Joint Standing Committee on Migration, or of proceedings in private session of that Committee, without the authorisation of the Committee, and, if so, whether a contempt was committed by that disclosure.

1.2 In giving precedence to the motion moved by Senator McKiernan, the Acting Deputy President, Senator Childs, on behalf of the President, drew attention to paragraph 16 of Privilege Resolution No. 6 which declares that the disclosure of a document confidential to a committee or proceedings in private session of a committee, without the authorisation of the committee or the Senate, may be held to be a contempt. He went on to say that "past decisions by the Senate indicate that the unauthorised disclosure of committee documents is regarded as potentially obstructive to committee operations and as a matter of some seriousness".

1.3 Senator McKiernan, in speaking to the motion to refer the matter to the Privileges Committee, drew attention to the concern within the Migration Committee "about the seriousness of the intrusion and interference in parliamentary processes". A matter of particular concern to the Migration Committee was, as Senator McKiernan stated, that "despite the fact that [the committee has] tried to allay their expectations, many [migrant detainees] are waiting with some expectation that there might be some outcome for them in the joint standing committee's deliberations. That is not the case - and I have to say that with some vigour here tonight. The committee is examining and making recommendations on future detention

policies and practices of the Australian government".

1.4 Senator McKiernan also advised the Senate that all Committee members present at a special meeting of the Migration Committee held to consider the matter of premature disclosure declared that they had not passed material on to the journalist concerned.

### **Conduct of inquiry**

1.5 While the Privileges Committee noted these assurances, it nevertheless decided itself to write to the Chairman, members and the secretary to the

Migration Committee seeking their advice on the matter. Senator McKiernan, as Chairman of the Migration Committee and a member of the Committee of Privileges, disqualified himself from the Privileges Committee's consideration of the matter.

1.6 Both Senator McKiernan and the secretary to the Committee responded in the following terms:

On 25 November 1993, the Joint Standing Committee on Migration held a private meeting to discuss the article which appeared in *The Canberra Times* that morning, purporting to reveal the draft recommendations of the Committee's report into detention practices. At that meeting, each Committee member present, as well as the Committee Secretary and Secretariat staff, were asked to respond to the following question:

Have you, or to the best of your knowledge any of your staff, provided to any person outside the Committee information relevant to the Committee's draft report on detention practices?

A response in the negative was received from the following persons:

Senator Jim McKiernan (Chairman)  
Senator Jim Short (Deputy Chairman)  
Senator Christabel Chamarette  
Senator Barney Cooney  
Mr Laurie Ferguson, MP  
Mr Philip Ruddock, MP

Mr Harry Woods, MP  
Mr Andres Lomp (Secretary)  
Ms Dianne Fraser (Parliamentary Officer)

Subsequent to the meeting, those Committee members and members of the Secretariat not present were asked the same question. A response in the negative was received from the following persons:

Hon Clyde Holding, MP  
Rt Hon Ian Sinclair, MP  
Mrs Kathy Sullivan, MP  
Ms Elizabeth Copp (Parliamentary Officer)  
Dr Kathryn Cronin (Legal Adviser)

All Committee members and staff of the Committee secretariat have indicated that they are unaware of the source of the disclosure.

1.7 All other members responded, also denying any knowledge of the source of the disclosure. However, the Chairman of the Committee also made the following comment:

"You may wish to note that on the morning on which the article appeared, Katrina Willis, an Australian Associated Press journalist, telephoned the Committee Secretary and, while requesting copies of submissions to the detention practices inquiry, mentioned that she was aware that a copy of a document supposedly containing the Committee's draft recommendations had been available to certain journalists in the Press Gallery, but that she had not seen a copy of that document".

The secretary made a similar statement.

1.8 Accordingly, the Committee of Privileges wrote to Ms Willis, and also to Ms Margo Kingston of *The Canberra Times*, the author of the report referred to this Committee, seeking their comments on the terms of reference. Ms Willis responded in the following terms:

"My recollection is that on the day that the news item in question appeared, I telephoned the Migration Committee secretariat to ask about collecting submissions.



I then went to the office to collect those submissions. In the process, I mentioned to committee staff member Di Fraser and the committee's legal adviser Kathryn Cronin that I had heard certain information about the committee's draft report but that I had not seen a copy of any documents relevant to that draft report.

To the best of my recollection, at no time did I say or suggest that I was aware of copies of relevant documents having been available to certain journalists in the Press Gallery.

I was not aware at the time nor have I become aware since of any such documents having been available to certain journalists in the Press Gallery".

1.9Ms Kingston advised the Committee that "[w]ith regard to the issues under investigation, I regret that I am unable to assist, for ethical reasons".

## CHAPTER TWO

### Comment

#### (a) Previous cases

2.1 The Committee of Privileges has previously considered the question of unauthorised disclosure of committee proceedings. The Committee has always regarded its first task as being to establish who, if anyone, has disclosed information without authority and whether such disclosure has been deliberate or inadvertent. The Committee considers that a person divulging information potentially has a higher degree of culpability than the recipient of the information. It has usually been unsuccessful in tracing the source. Depending on the circumstances of each case, it has pursued the matter further, to seek the source from recipients of the information, and has also examined the use to which the unauthorised information has been put.

2.2 The most serious matter of this nature on which the Committee has reported occurred in 1984, when it recommended to the Senate that serious contempts should be found in respect of the unauthorised publication of *in camera* evidence taken before the Senate Select Committee on the Conduct of a Judge. The Committee considered the contempt to be of utmost gravity, and attempted to establish the source of the disclosure, from both Senators and staff, and from the publisher, editor and journalist from the newspaper concerned. It was unable to do so. While that Committee recognised the difficulties involved in finding a contempt against the recipients of the information while failing to discover the provider of the unauthorised material, it regarded that particular matter so seriously that it recommended that serious contempts should be found. The Senate accepted the recommendation. The Committee subsequently received a reference from the Senate on the question of what penalty, if any, should be imposed but its report, tabled in 1985, was not considered by the Senate before both Houses were dissolved in 1987.

2.3 There is little doubt that the improper and potentially dangerous revelations contained in the *National Times* articles referred to the Committee of Privileges were a spur to the unauthorised disclosure of such evidence being declared a criminal offence when the *Parliamentary Privileges Act 1987* passed both Houses of Parliament. The Committee of Privileges continues to regard the disclosure of *in camera* evidence as a particularly serious matter because of the possible adverse consequences for those who have given such

evidence or who are referred to in it and the effect of its publication in deterring future witnesses from co-operating with parliamentary committees.

2.4 The second case of this type on which the Committee reported involved the premature release of a committee report. In this case, a Senator acknowledged the possibility that that Senator might have been the cause of the premature publication. The Committee, noting the views of the then Chairman of the Standing Committee concerned that he believed that the premature release of the report did not impede nor did it have the potential to impede the Committee's work, determined that, while it was open to the Committee or the Senate to find that a contempt had been committed, in the light of all the circumstances a finding of contempt should not be made.

2.5 The third such matter to come before the Committee involved the premature disclosure of a submission to a select committee. The Committee of Privileges, noting that the premature disclosure did not impede the operations of the select committee and that the disclosure was made without advertent to the possibility that it was unauthorised, reached the same conclusion as in the second case.

2.6 In each case, the Committee went on to make recommendations which have since been adopted by the Senate. One recommendation was that in any cases of this nature the committee affected should itself examine the matter, to attempt to discover the source of the disclosure, and to determine whether the disclosure had a tendency to interfere, or actually interfered, substantially with the Committee or the Senate, and if so to report to the Senate with a view to the matter being referred to the Committee of Privileges. In the present case these actions were taken, and the Migration Committee, being a joint committee, raised the matter with both the President of the Senate and the Speaker of the House of Representatives. The matter was referred to this Committee.

**(b) Present case**

2.7 The Committee of Privileges has received written assurances from all members and on behalf of the staff of the Joint Committee on Migration that no improper or unauthorised disclosure of that Committee's proceedings was made to any person. It also notes the comments of Ms Katrina Willis at paragraph 1.8 above, and the statement by Ms Margo Kingston, the

journalist who wrote the article, that she was unable to assist for ethical reasons.

2.8 Without taking evidence from Ms Kingston, the Committee is unable to discover whether any disclosure that might have occurred was deliberate or inadvertent, or indeed whether any such disclosure occurred at all, despite the implication in the article that it was based on an improper disclosure of information. A competent journalist, with a good knowledge of the subject and who had followed the matter closely, might reasonably have reached an inspired conclusion based on already existing evidence publicly given to the Migration Committee. This is suggested in the first paragraph of the article, which states that "Indications emerged that federal M.P.s are pressing for a major softening of Australia's mandatory detention of boat people". While "draft recommendations" are referred to in the report, this alone does not indicate that the journalist had improper access to the Migration Committee's deliberations. The question for the Committee of Privileges is whether to take the matter further.

2.9 The possible improper and substantial interference with the deliberations and findings of a parliamentary committee cannot lightly be dismissed. In this case, it is clear from the Chairman's statement on behalf of the Migration Committee that the matters raised were of significant concern at the time. Furthermore, that the committee was apprehensive that false hope would be given to people directly affected by its deliberations adds an even more serious dimension to the possible contempt involved. The Committee of Privileges notes, too, that even if the article contained mere speculation on the content of the report, its tone was such that persons reading it would assume that it emanated from inside information. To allow it to pass without comment in either event would be unfair to other journalists who might similarly wish to "scoop" their competitors but are aware of the propriety involved and sanctions against their doing so.

2.10 Assuming improper disclosure occurred, the Committee reiterates its condemnation of the actions of the person divulging the information. If the dissemination of the information was accidental, the carelessness involved constituted negligence; if it was deliberate, the source of the information could be regarded as having committed a contempt, because of the damage which occurred to the operations of the Migration Committee, as the Chairman averred on behalf of that Committee.

2.11 The Committee of Privileges has decided not to pursue the matter further,

because of the denials by the most likely sources of information on the deliberations of that Committee, the members and staff of that Committee, and Ms Kingston's "regret that [she was] unable to assist, for ethical reasons". One positive aspect of the matter has been that, since the reference to the Committee of Privileges, the Joint Committee on Migration has been able to complete its report without further premature exposure of its deliberations appearing in the media.

## **FINDING**

2.12 The Committee of Privileges reiterates that, given the series of denials from the most likely sources of Ms Kingston's information, and her inability to assist with the matter, it is unable to make a finding that there was an improper disclosure of a document before, or proceedings of, the Joint Committee on Migration. Under the circumstances, it therefore does not find that a contempt has been committed.

## **Recommendation**

2.13 The Committee's account at paragraphs 2.1-2.6 of its previous treatment of possible improper publication of documents or proceedings of other committees demonstrates that it has placed considerable importance on investigating the source of the information as well as its recipient. In the most serious cases before it, such as the present case, the Committee has been hampered by the unwillingness of the journalists involved to assist it in this task, on the grounds of journalistic ethics. Premature publication of information, or speculation possibly based on inside information, with the intention or effect of influencing the outcome of a committee's deliberations is of considerable concern. The conflict between the right of a house and its committees to conduct proceedings without impediment and, in particular, to protect witnesses before its committees, on the one hand, and journalists' insistence on protecting their sources is not easily resolved.

2.14 Some members of the Committee of Privileges are participating, as members of the Senate Standing Committee on Legal and Constitutional Affairs, in an inquiry into the rights and responsibilities of the media. The Committee **recommends** that the issue of journalistic ethics arising from this case be referred to that committee for consideration as part of its media reference.

**Margaret Reynolds**  
**Chairperson**